

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	}	
	}	
	}	
v.	}	ID No. 0203014274
	}	
	}	
DEANDRE E. REDDING,	}	
	}	
Defendant.	}	

ORDER

This 31st day of March, 2006, it appears that:

1. The Defendant was convicted following a trial by jury on October 22, 2002, of Robbery First Degree, Burglary First Degree, Theft of a Firearm, Possession of a Firearm During the Commission of a Felony, Wearing a Disguise During the Commission of a Felony and Endangering the Welfare of a Child. He was sentenced by the undersigned on January 15, 2003 to a term of eight years in prison followed by probation.

2. The Defendant filed a timely appeal of his

convictions to the Delaware Supreme Court. His challenge in that regard was based on the alleged insufficiency of the evidence to support the convictions for the burglary and the related weapons offenses. That appeal was denied on September 23, 2003.

3. The Defendant filed the instant motion pursuant to Superior Court Criminal Rule 61 on April 7, 2005. The State and the Defendant's attorney responded respectively on May 6 and December 12, 2005. The Court then took the matter under advisement.

4. At all times relevant to these proceedings, he was represented by Edmund H. Hillis, Esquire. Mr. Hillis was admitted to practice law in this State in 1980. He has been employed as an Assistant Public Defender for at least twenty-two years.

5. In support of the instant motion, the Defendant relies upon two grounds. They are as follows:

Ground one: Abuse of discretion violation of double jeopardy.

Supporting facts . . . : conviction for Robbery [First Degree] and Burglary [First Degree] constituted a single and continuous act, for which defendant may properly be convicted only once. [sic]

Ground two: Ineffective assistance of counsel.

Supporting facts . . . : Counsel failed to investigate and develop manifested case law pursuant to Title 11 Del. C. 206 that would have supported defendant's charges being merged. [sic]

6. The State opposes the Defendant's motion, arguing that it is procedurally barred and that it should be denied on the merits. Mr. Hillis contends that he was not ineffective as Defendant's attorney generally and that the Defendant's view of the legal viability of his convictions on double jeopardy grounds is not supported by the applicable law.

7. A predicate to addressing the merits of a postconviction relief motion is an examination to determine whether any procedural bars exist. The procedural bars set forth in Rule 61(i)(1)-(4) may only be lifted if there is a mechanism to do so in the pertinent subsection of Rule 61.¹ If no such relief is

¹ A motion for postconviction relief filed prior to July 1, 2005, may be filed no more than three years after the judgment of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment is final, no more than three years after the right is first recognized by the Supreme Court of Delaware or by the United State Supreme Court. Super. Ct. Crim. R. 61(i)(1). Grounds not presented in prior postconviction proceedings or formerly adjudicated claims are barred unless consideration of the claim is warranted in the interest of justice. Super. Ct. Crim. R. 61(i)(2) & (4). Likewise, any ground for relief not asserted in the

available, the "catchall" provision of Rule 61(i)(5) is available to provide relief from procedural bars contained in 61(i)(1-3).

8. To be specific, 61(i)(5) provides that the aforementioned bars may be raised where the defendant establishes a colorable claim that there has been a "miscarriage of justice" under Rule 61(i)(5). A colorable claim of "miscarriage of justice" occurs when there is a constitutional violation that undermines the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.² This exception to the procedural bars is very narrow and is only applicable in very limited circumstances.³ The defendant bears the burden of proving that he has been deprived of a "substantial constitutional right."⁴

9. The Court must therefore apply the procedural bars of Rule 61(i) before considering the merits of the

proceedings leading to the judgement of conviction are barred unless the movant shows cause for relief and prejudice. Super. Ct. Crim. R. 61(i)(3).

² Super. Ct. Crim. R. 61(i)(5).

³ *Younger v. State*, 580 A.2d 552, 555 (Del. 1990).

⁴ *Id.*

Defendant's claims.⁵ As a matter of policy, Courts ordinarily should protect the integrity of the procedural rules by adhering to the preceding maxim and foregoing a review of the merits.⁶ He raises the aforementioned allegations for the first time with this motion. He did not raise them before trial nor did he do so during the course of his appeal of the convictions entered as a result of and following that event. Rule 61(i)(3) therefore comes into play since any ground not asserted in the proceedings leading up to the judgment of conviction are thereafter barred.

10. In so far as any relief nominally available to the Defendant based upon his double jeopardy argument is concerned Rule 61(i)(3) operates as a bar. Nor can the Defendant avail himself of Rule 61(i)(5). Simply put, he does not allege that the Court lacks jurisdiction or that the alleged constitutional violations had the above stated impact on the proceedings leading up to his

⁵ *Stone v. State*, 690 A.2d 924 (Del. 1996); *Teagle v. State*, 755 A.2d 390 (Del. 2000); *Hill v. State*, 758 A.2d 933 (Del. 2000).

⁶ *Younger v. State*, 580 A.2d 552, 554 (Del Super. Ct. 1990).

conviction following his trial. To the extent the remainder of Mr. Maxwell's contentions allege ineffective assistance of counsel, a different result, at least from a procedural standpoint, is appropriate.

11. More specifically, claims alleging ineffective assistance of counsel escape the bar of Rule 61(i)(3) by virtue of Rule 61(i)(5).⁷ Those claims must be addressed on their merits. The controlling standard is outlined in *Strickland v. Washington*.⁸ Under *Strickland*, two factors must be established in order to prevail on a claim of ineffective assistance of counsel. First, the Defendant must demonstrate that counsel's representation fell below an objective standard of reasonableness.⁹ Second, he or she must show that counsel's actions were prejudicial to the defense, creating a reasonable probability that, but for counsel's error, the result of the proceeding would have been

⁷ *Id.*

⁸ 466 U.S. 668 (1984).

⁹ *Id.* at 694.

different.¹⁰ Under the first prong of the test, there is a "strong presumption that the representation was professionally reasonable."¹¹

12. In the first instance, the Defendant has not established what counsel should have done under the circumstances other than in vague and conclusory terms. At best, the Defendant suggests that Mr. Hillis should have "investigated" and "developed" case law that would have supported the merger of some of the charges lodged against him. Moreover, the actions of Mr. Hillis, a member of the Bar of the Supreme Court of this State for more than twenty-five years, are presumed to be professionally reasonable.¹²

13. Nor has the Defendant indicated how the outcome of the proceedings would have been different or the prejudice he suffered as a result of the ineffective assistance of counsel. He does not deny that he engaged

¹⁰ *Id.*

¹¹ *Stone*, 690 A.2d at 925.

¹² Indeed, Mr. Hillis argues that the law in this area did not support the challenge that the Defendant seeks to mount. The Defendant does not address this point.

in the conduct underlying the charges, only that fewer charges should have been lodged against him. He does not argue that he would have received a lesser sentence of incarceration, that he would have been set free or that he would placed on a lesser level of supervision.

14. In short, the Defendant's ineffective assistance of counsel claims do not meet the *Strickland* test and must be deemed to be without merit as a result.

For all the reasons set forth above, the Court must conclude that the Defendant's motion must be, and hereby is, **denied**.

IT IS SO ORDERED.

TOLIVER, JUDGE

CHT, IV
cc: Prothonotary